

**MINUTES OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**
Tuesday, December 3, 2002 – 9:00 a.m. – Room 416 State Capitol

Members Present:

Sen. Howard A. Stephenson, Senate Chair
Rep. David Ure, House Chair
Sen. Ed Mayne
Sen. Michael G. Waddoups
Rep. Judy A. Buffmire
Rep. James R. Gowans
Rep. Merlynn T. Newbold
Speaker Martin R. Stephens

Members Absent:

Sen. Mike Dmitrich
President Al Mansell

Staff Present:

Mr. Arthur L. Hunsaker, Research Analyst
Ms. Susan Creager Allred, Associate General Counsel
Ms. Cassandra N. Bauman, Legislative Secretary

Note: A list of others present and a copy of materials can be found at <http://www.image.le.state.ut.us/imaging/history.asp> or by contacting the committee secretary at 538-1032.

1. Committee Business

Chair Stephenson called the meeting to order at 9:13 a.m. Sen. Dmitrich was excused from the meeting.

MOTION: Rep. Newbold moved to approve the minutes of the November 18, 2002 meeting. The motion passed unanimously with Speaker Stephens absent for the vote.

2. Policies and Rules

Mr. Kent Bishop, Governor's Office of Planning and Budget, provided background on the Utah Rulemaking Act. He indicated that most states adopted rulemaking acts based on the 1961 Model Rulemaking Act. He stated that the model act defines "rule" to mean "an agency statement of general applicability that implements, interprets, or prescribes law or policy." He expressed concern with the definition of "policy" being removed from the administrative rulemaking statute.

Mr. Ken Hansen, Director, Division of Administrative Rules, stated that the statutory changes endorsed by the Committee to remove any ambiguity, create an alternate ambiguity—"unenforceable rule." He suggested maintaining the existing statutory language and suggested that the Administrative Rules Review Committee review further options in the 2003 interim.

Mr. Gary Doxey, General Counsel to Governor Leavitt, stated that the executive branch has the same goal in mind as the Committee—to decrease ambiguity and increase certainty. He indicated that there are some complicating factors in the language that the Committee endorsed in its November 18, 2002 meeting. He expressed particular concern with non-binding advisory documents, often issued by the Utah State Tax Commission.

Committee discussion followed. Mr. Doxey indicated that he would suggest language for clarifying "rule" in statute.

Chair Stephenson indicated that amendments should be brought to the next meeting. He recommended that staff draft the legislation as approved by the Committee for the next meeting.

Mr. Harden Eyring, Utah System of Higher Education, State Board of Regents, expressed concern and confusion with the proposed language. He questioned whether internal management policies, or written statements, would be enforceable within an agency.

MOTION: Speaker Stephens moved that staff clarify in the legislation, that internal management of agencies, which are not written as rule, be enforceable within those agencies—that the agency is not required to submit internal management statements to the Division of Administrative Rules—and that those written statements cannot be in violation of any federal or state law.

Ms. Masuda Medcalf, Department of Commerce, suggested that §63-46a-3.5(1)(a) read:

"An agency's written statement that conforms to the definition of a rule under Section 63-46a-2(17) shall be made in accordance with this chapter."

and §63-46a-3.5(1)(b) read:

"An agency's written statement under subsection (1)(a) is not enforceable as a rule if it is not made in accordance with this chapter."

Speaker Stephens amended his motion to incorporate the suggested language. The motion passed unanimously.

3. R610-1-4 Tips, Gratuities, and Commissions

Chair Stephenson provided background on the issue, indicating that the Utah Labor Commission's rule does not appear to comply with statute due to its application of the statutory phrase "tip allowance." He stated that one option would be to clarify "tip allowance" in statute and have the Labor Commission rewrite the rule to comply with the amended statute.

Commissioner Lee Ellertson, Utah Labor Commission, opined that the statute should be rewritten and clarified for the benefit of employees and employers. He distributed "Utah Minimum Wage Act;" "R610-1. Minimum Wage, Clarify Tip Credit, and Enforcement;" and "Tipped Employees Under the Fair Labor Standards Act."

Mr. Harold Stephens, Manager, Employment Standards Bureau, Utah Labor Commission, stated that the confusion with "tip allowance" is that the commission had to determine whether the allowance was for the benefit of the employer or the employee. He noted that the commission determined a tip allowance is for the benefit of an employer.

Chair Stephenson indicated that Rep. Ure will pursue legislation to clarify the statute and that the Committee will take no action on the rule until the conclusion of the 2003 General Session. Rep. Buffmire requested that each committee member receive a copy of the legislation.

4. Draft Bill, "Division of Corporations Amendment"

Mr. Hunsaker indicated that the Committee had requested that staff draft legislation repealing the reporting requirement of the Division of Corporations to the Administrative Rules Review Committee. He indicated that the legislation distributed prior to the meeting was in response to that request.

MOTION: Rep. Ure moved that the legislation be adopted as a committee bill. The motion passed unanimously.

5. Review of August 27, 2002 Motion Regarding Policies and Rules

Mr. Hunsaker explained that the Committee had directed staff to draft legislation changing "policies" to "rules" throughout the code where appropriate. He pointed out that several other terms, including "procedures," "standards," and "protocols" are also being used to describe agency action that conforms to the definition of a rule. He asked if the Committee wanted to expand the motion to include additional terms or withdraw the motion in light of the broader "written agency statement" language currently endorsed by the Committee.

Chair Stephenson indicated that staff will not pursue this item further until the definitions of policy and rule have been clarified.

6. Other Items / Adjourn

The next meeting is scheduled for Monday, December 16, 2002 at 3:00 p.m.

MOTION: Rep. Ure moved to adjourn the meeting. The motion passed unanimously.

Chair Stephenson adjourned the meeting at 11:07 a.m.